

§ 611.1226

12 CFR Ch. VI (1–1–02 Edition)

(v) A description of any event subsequent to the submission of the termination application to the Farm Credit Administration that would have a material impact on any information in the termination application.

(w) A statement of any other material fact or circumstance that a stockholder would need to know in order to make an informed decision on the proposed plan of termination, or that is necessary to make the required disclosures not misleading.

(x) A proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(y) A certification signed by the entire board of directors of the terminating association as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director shall inform the Farm Credit Administration of the reasons for such refusal.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991; 58 FR 48790, Sept. 20, 1993]

§ 611.1226 Prohibited acts.

(a) No terminating association or director, officer, employee or agent thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact concerning the proposed plan of termination to a stockholder of the association.

(b) No director, officer, employee, or agent of a terminating association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association's plan of termination constitutes, directly or indirectly, either a recommendation on the merits of the proposal or an assurance concerning the adequacy or accuracy of any information provided to the association's stockholders and other equity holders in connection therewith.

§ 611.1230 Plan of termination.

The plan of termination shall include the following information:

(a) Copies of all contracts, agreements and other documents pertaining

to the proposed termination and organization of the successor institution.

(b) A statement of the means by which the assets of the terminating association will be transferred to, and its liabilities assumed by, the successor institution.

(c) The terminating association's plan to retire, and the successor institution's plan to issue, equities held by holders of stock, participation certificates, and allocated equities, if any.

(d) A copy of the charter application filed with the appropriate Federal or State chartering authority, together with any exhibits or other supporting information that is submitted to such authority.

(e) A statement whether the successor institution will continue to have a credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

§ 611.1235 Stockholder reconsideration.

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that—

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 35 days after the date of mailing of the notification to stockholders of the final results of the stockholder vote required under § 611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholder signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were

Farm Credit Administration

§611.1240

eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitioners in the reconsideration vote process.

(d) If the terminating association certifies that at least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stockholders of the association voting in person or by written proxy do not vote against the termination, the termination shall be effective pursuant to the provisions of §611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitioners, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, immediately provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

§611.1240 Exit fee.

(a) For the purposes of this section, the following definitions apply:

(1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted in this section.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted in this section, and as adjusted pursuant to the requirements of §611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by which the total capital of the association exceeds 6 percent of its assets. The exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exit fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a qualified public accountant, as defined in §621.2(i), as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraphs (e), (f), (g), and (h) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution.